



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 7243-99

10 March 2000

CAPT [REDACTED] USMC

Dear Capt [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

It is noted that the Commandant of the Marine Corps (CMC) has inserted a memorandum in your record reflecting that you filled a major's billet during the periods of the contested fitness reports.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 9 March 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB), dated 23 November 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 9 February 2000, copies of which are attached. They also considered your rebuttal letter dated 29 February 2000.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice warranting further relief. They substantially concurred with the report of the PERB in concluding that the contested fitness reports should not be removed. They were unable to find that including the information that you filled a major's billet would have appreciably enhanced your chances before the Fiscal Year 2000 and 2001 Major Selection Boards. Since they found insufficient grounds to remove your failures of selection, they had no basis to set aside action to effect your involuntary discharge from the Regular Marine Corps on 1 August 2000. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER  
Executive Director

Enclosures



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
3280 RUSSELL ROAD  
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:  
1610  
MMER/PERB  
NOV 23 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED] USMC

Ref: (a) Captain [REDACTED] DD Form 149 of 17 Aug 99  
(b) MCO P1610.7D w/Ch 1-2  
(c) MCO P1610.7D w/Ch 1-3

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 17 November 1999 to consider Captain [REDACTED]'s petition contained in reference (a). Removal of the following fitness reports was requested:

- a. Report A - 960816 to 970731 (AN) -- Reference (b) applies
- b. Report B - 970801 to 970815 (TR) -- Reference (c) applies

2. The petitioner contends that both reports are substantively inaccurate/unjust. Specifically, the petitioner argues that Report A -- and by it's extension, Report B -- is internally inconsistent; that the markings in Section B do not reflect or coincide with the comments contained in Section C. Additionally, the petitioner points out that he was filling a major's billet as the Aviation Safety Officer (ASO), yet the Reporting Senior failed to incorporate that required comment. In addition to his other contentions/allegations, the petitioner disclaims any form of performance counseling, other than when he received the challenged fitness report. To support his appeal, the petitioner furnishes his own detailed statement and a letter from Lieutenant Colonel [REDACTED]

3. In its proceedings, the PERB concluded that, with one minor exception, both reports are administratively correct and procedurally complete as written and filed. The following is offered as relevant:

- a. The petitioner is correct that [REDACTED] should have identified that he was filling a billet higher than the grade actually held. The Board does not, however, find this oversight to invalidate the entire report, and has directed the insertion of an appropriately worded Memorandum for the Record (MFR) onto the performance ("P") section of the petitioner's Official

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED] USMC

Military Personnel File (OMPF) indicating that during the periods covered by the challenged fitness reports, he was filling a major's billet.

b. The Board acknowledges that Major [REDACTED] could have selected a better/more appropriate choice of verbiage for the Section C narrative. Likewise, they also conclude that the petitioner was given credit for his accomplishments via the assigned markings in Section B. To this end, the Board discerns neither an error nor an injustice; nor is there a blatant inconsistency that would otherwise invalidate the overall appraisal.

c. While the statement furnished by Lieutenant Colonel [REDACTED] is supportive and identifies a "personality conflict" between the petitioner and the Executive Officer (Major [REDACTED]), the Board is hard-pressed to accept his argument that Major [REDACTED] "...lack of comments or comments added unfounded bias to these two fitness reports." There is simply no showing that the alleged "personality conflict" between the petitioner and the Reviewing Officer somehow impacted the Reporting Senior's ability to fairly evaluate the petitioner.

d. As a final matter, the Board finds no evidence to support the petitioner's disclaimer to performance counseling. In this regard, they observe that the inherent relationship between the petitioner and the Reporting Senior would have ensured some type of performance feedback during the 12 months covered by the fitness reports under consideration, some of which may not have been readily apparent to the petitioner.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness reports should remain a part of Captain [REDACTED] official military record. The limited corrective action identified in subparagraph 3a is considered sufficient.

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)  
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF  
CAPTAIN [REDACTED] USMC

5. The case is forwarded for final action.

[REDACTED]  
Colonel, U.S. Marine Corps  
Deputy Director  
Personnel Management Division  
Manpower and Reserve Affairs  
Department  
By direction of the Commandant  
of the Marine Corps



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
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IN REPLY REFER TO:

1600  
MMAA-4  
9 Feb 00

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF  
NAVAL RECORDS

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]  
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of  
Captain [REDACTED] USMC  
of [REDACTED]

1. Recommend disapproval of Captain [REDACTED] implied request for removal of his failures of selection.

2. Per the reference, we reviewed Captain [REDACTED]'s record and petition. He failed selection on the FY00 and FY01 USMC Major Selection Boards. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Annual fitness report of 960816 to 970731 and the Transfer fitness report of 970801 to 970815. Captain [REDACTED] implies a request for removal of his failures of selection

3. In our opinion, the petitioned reports do present competitive concern to the record. However, Captain [REDACTED] has other areas of competitive concern in his record that more than likely led to his failure of selection.

a. **Section B Marks.** The record reflects less competitive Section B marks in Judgment and Force. Captain [REDACTED] receives an Excellent in Force as a captain on a combat fitness report.

b. **Overall Value and Distribution.** Captain [REDACTED] overall Value and Distribution marks are less competitive. He has nine officers ranked above him and four below, placing him near the bottom of the pack.

c. **Professional Military Education (PME).** According to his Official Military Performance File and Master Brief Sheet, Captain [REDACTED] had not completed the requisite PME for his grade as required by Marine Corps Order P1553.4 prior to the convening of the FY00 Board.

Subj: BCNR PETITION FOR CAPTAIN [REDACTED]  
[REDACTED] USMC

4. In summary, we believe Captain [REDACTED]'s petition is without merit. His record received a substantially complete and fair evaluation by the Board. Had the petitioned reports been removed by the PERB, his record would not have been significantly improved. Captain [REDACTED]'s record has other areas of competitive concern beyond the petitioned report that more than likely led to his failures of selection. Therefore, we recommend disapproval of Captain [REDACTED] implied request for removal of his failures of selection.

5. Point of contact is [REDACTED], (703) [REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps  
Head, Officer Career Counseling and  
Evaluation Section  
Officer Assignment Branch  
Personnel Management Division